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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,159	12/01/2003	Erning Xia	P03366	4792
23702	7590	09/14/2007		
Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604-2701			EXAMINER BARHAM, BETHANY P	
			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			09/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/725,159	XIA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bethany P. Barham	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 4,7,9-12,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,7,9-12,20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Summary***

Receipt of Applicant's Response and Amended Claims filed on 08/24/2007 is acknowledged. Claims 4, 7, 9-12 and 20-21 are pending. Claims 4, 7, 9-12, and 20-21 are rejected.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/24/2007 has been entered.

Due to Applicant's Amendments the 112<sup>1st</sup> rejection of record (05/29/2007) is hereby **withdrawn**. All other rejections of record are hereby maintained.

### ***MAINTAINED REJECTIONS***

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 7, 9-12, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 6,274,133 ('133) in view of US patent 5,928,606 ('606).

The limitations of claims 9-12 and 20-21 are taught by '133 in view of '606:

- '133 disclose a method for treating a contact lens with a solution (abstract). The method comprises contacting the surface of a contact lens with a solution comprising a cationic cellulose polymer, a tonicity agent, and a buffering agent (claim 1). Cellulose polymers are a well-known example of polysaccharides, further polyquaternium 10 or UCARE polymers are taught by '133 (col. 5, lines 39-42).
- One or more surfactants are taught by '133 in claim 2. Viscosity agents such as PVP K30 are taught and Tetronic 1107 is a known surfactant (Table 2).
- According to '133, a wetting agent can be added to the contact lens solution (Claims 4-5). The wetting agent can comprise mono or disaccharides (claim 5). Thus, the contact lens solution advanced by '133 comprises a cationic polysaccharide and a saccharide.
- It should be noted that the examiner is interpreting a contact lens as a type of medical device.

The limitations of claims 4 and 7 are taught by '133 in view of '606:

- Table 2 and Example 2 teach including Polymer JR or Polymer JR 30M (col. 10, lines 19 and 39-40).
- '133 does not teach glucose or alpha-methyl glucopyranoside, but teaches saccharides generically.

- '606 teaches a device for cleaning and disinfecting a contact lens, and a method of disinfecting a contact lens comprising a wetting agent (abstract) and the wetting agents are taught to include saccharides such as glucose.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of '133 with '606, since both teach a method of treating a contact lens. Further, '133 discloses a treatment composition comprising polysaccharides such as polyquaternium 10 and polymer JR 30M and tonicity and buffering agents along with wetting agents, one of ordinary skill in the art would be motivated to look to '606 for known wetting, tonicity and buffering agents used in contact lens treatment solutions and would find that glucose is a known wetting agent and imparts disinfecting and cleansing properties. As such it would have been prima facie obvious to combine the teachings of '133 and '606 to obtain a method of imparting preservative efficacy to contact lens and medical devices comprising polyquaternium 10 and saccharides such as glucose.

### ***Response to Arguments***

Applicant's arguments with respect to claims 4, 7, 9-12 and 20-21 have been considered but are not persuasive. Applicant has argued that not each and every limitation is taught by the prior art, but the Examiner respectfully disagrees. '133 teaches a contact lens cleansing solution combining polyquaternium 10 with a wetting agent such as a mono- or di-saccharide while '606 teaches wetting agents such as glucose for treating and disinfecting contact lenses. As such a composition for treating

contact lenses comprising polyquaternium 10 and glucose would cleanse and disinfect the lenses according to the prior art.


### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany Barham whose telephone number is (571)-272-6175. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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